

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRANCIS HEAFY,

Petitioner,

MEMORANDUM AND ORDER

-against-

Civil Action No.
CV-07-4003 (DGT)

NEW YORK STATE DIVISION OF
PAROLE,

Respondent.

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Trager, J:

Petitioner Francis Heafy, pro se, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to correct an alleged discrepancy between the sentence he received from the New York State Supreme Court and the one he received from the New York State Division of Parole. Specifically, petitioner contends that the Supreme Court sentenced him to three years of post-release supervision, not the five-year term he is serving. Respondent counters that the transcript of the sentencing hearing demonstrates that petitioner is incorrect and that he was sentenced to a five-year term of post-release supervision.

Regardless of the merits of petitioner's claim, it cannot be considered under § 2241. Section 2241 provides that a district court may grant a writ of habeas corpus to a prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Unlike a federal

prisoner, a state prisoner cannot use § 2241 to challenge the execution of his sentence. He must bring such challenges under § 2254. Cook v. New York State Div. of Parole, 321 F.3d 274, 278 (2d Cir. 2003) ("A state prisoner . . . not only may, but according to the terms of section 2254 must, bring a challenge to the execution of his or her sentence . . . under section 2254."). As such, petitioner's claim cannot be considered, and he must first resort to state administrative and/or judicial remedies.

For the foregoing reasons, petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed. The Clerk of the Court is directed to enter judgment accordingly and close the case.

Dated: Brooklyn, New York
September 30, 2010

SO ORDERED:

_____/s_____
David G. Trager
United States District Judge